होने के लिए जन प्रतिनिधियों के नाते हम सब बिहार के संसद सदस्यों को निमन्त्रण मिला हुआ है । मैं कहना चाहता हूं कि उससे आप बच नहीं सकते । बिहार के मजदूर और बिहार के किसान के भूखों मरने वाले 50 हजार परिवार जिनकी जीविका इसी उद्योग पर चलती थी, वे अगर आज आग में कूदने के लिए तैयार है तो मेरे जैसा प्रतिनिधि सबसे पहले आग में कूदने के लिये तेयार होगा । बड़ा भयानक आंदोलन एक मई के बाद बिहार में शुरू होने जा रहा है । सरकार को सचेत कर रहा हूं । अभी हम मार्च के अन्त में चल रहे हैं । अप्रैल का महीना पूरा पड़ा है, आप उस उद्योग को चालू कराइये । आपने अभी तक न तो टेकओवर किया है आश्वासन देने के बाद और न लिक्विडेशन में डाला है । कोई कदम अभी तक उसको चालू करने के लिये आपने नहीं उठाया है । याद रखिये तीन जिलों में आग लग गयी है जो उस पर निर्भर कर रहे हैं रोहतास, पलामू और औरंगाबाद । अगर इन तीन जिलों से आगे आग बढ़ गई तो आगे बढ़ते-बढ़ते पूरे बिहार में भड़क जायेगी क्योंकि पूरा बिहार इसको अपना अपमान समझ रहा है । इस ओर सरकार का ध्यान खींचना चाहता हूं कि वह इस खतरे से बचे । इसके लिये सरकार को सचेत भी कर रहा हूं । आपने अवसर दिया इसके लिए आपका धन्यवाद ।

THE HIGH COURT AND SUPREME COURT JUDGES (CONDITIONS OF SERVICE) AMENDMENT BILL, 1988

THE MINISTER OF STATE IN THE MINISTRY OF LAW AND JUSTICE (SHRI HANS RAJ BHARDWAJ): Sir, I move:

"That the Bill further to amend the High Court Judges (Conditions of Service) Act, 1954, and the Supreme Court Judges (Conditions of Service) Act, 1958, as passed by the Lok Sabha, be taken into consideration."

As you are aware, during the year 1986, substantial improvements in the Service Conditions of the Judges of the High Courts and the Supreme Court have been made. The present Bill is also a result of our concern to bring further improvements in the Service Conditions of Judges. In the Bill passed by the Rajya Sabha on 14-8-1986, enhanced pensionary benefits, enhanced sumptuary allowances and conveyance facilities were extended to the Judges with effect from 1-11-1986.

Those Judges who retired prior to 1-11-1986, were not entitled to the enhanced rates and scales of pensionary benefits. However, in the intervening period, few Hon'ble Judges have approached the Government as well as the Supreme Court of India. Though, the matter was receiving the attention of the Government, the Supreme Court of India delivered its verdict that the Judges including Chief Justices who retired prior to 1-11-1986, were also entitled to the rates and scales of pensionary benefits as applicable to the Judges including Chief Justices who retired on or after 1-11-1986. Keeping in view, the Judgement of the Supreme Court, the Government have decided that Judges including Chief Justices who retired prior to 1-11-1986, may also be given similar benefits.

The enhanced conveyance facilities included the provision of Staff Car and driver in lieu of a fixed amount as Conveyance Allowance. However, later on it was found that the value of conveyance facilities and sumptuary allowance paid to the Judges were being computed for the purpose of Income-tax paid by the Judges under the head 'Salaries'. The computation of Inocme-tax under the

[Shri Hans Raj Bhardwaj]

head 'Salaries' on the enhanced conveyance facilities and sumptuary allowances resulted in the erosion of the benefits extended to the Judges in this regard with effect from 1-11-1986. Now, it is proposed to exempt the value of conveyance facilities and sumptuary allowances payable/paid to the Judges from the purview of Income-tax.

It is also proposed to raise the amount of Death-cum-Retirement Gratuity admissible to Judges who had not held a pensionable post prior to their appointment as Judges, from the present figure of Rs. 50,000. The Death-cum-Retirement Gratuity payable to such Judges is regulated by the rules applicable to Central Government Group-A Employees, who are now entitled to a maximum of Death-cum-Retirement Gratuity of Rs. 1,00,000 with effect from 1-1-1986. The Supreme Court have decided that such Judges should also be given this benefit from the same date. The Government has accordingly decided to remove the present ceiling of Rs. 50,000.

In view of the above, the present Bill is being placed before this House for consideration. I hope this will meet with whole-hearted support as was done earlier, from all Members of the House and returned.

The question was proposed.

DR. R. K. PODDAR (West Bengal): Mr. Vice-Chairman, Sir, nobody would grudge these financial benefits to High Court and Supreme Court Judges. In fact, we always welcome such benefits. The maximum of the death-cum-retirement gratuity to Judges will be increased from Rs. 50,000 to Rs. 1,00,000 as for Group A employees, the enhanced rates of pension will be extended to even those who retired before 1-11-86 and they will now get relief from Income Tax on the value of the conveyance facilities and sumptuary allowance. All these provisions are very good. The question is, I would have thanked the Government more if wisdom had dawned on them before the Supreme Court verdict. Anyway, it is a good measure.

Sir, it appears for this Government charity never begins at home. Whether it is a question of Operation Black-board of the Human Resources Development Ministry, or of health care facilities of the people, they always, tend to shift the burden to the State Governments. In this case also the Centre is shifting the financial burden of the benefits to the State Governments. The Centre will spend only a meagre sum of Rs. 10 lakh per year for these benefits. All the financial burden of the benefits accruing to the High Court Judges, and even of the Supreme Court Judges, will be borne by the State Governments, because for their period of service to the State Government, the amount to be given will be borne by the State Government. I would request at least the Law Ministry not to be so hard-handed with the State Governments because the burden on their backs is already full. Please do not add additional straws to this burden.

[**The Vice-Chairman (Dr. Bapu Kaldate** in the Chair].

Sir, I want to raise some issue which are not directly related to this Bill. It appears that the Law Ministry is not taking a comprehensive view of the judicial system of our country. They are only making half-hearted attempts whenever they face some difficulties. There are many unfilled vacancies of Judges, both in the Supreme Court and the High Courts, on the one hand, and on the other hand lakhs and lakhs of cases are piling up in the High Courts and the Supreme Court. But the Government is sitting almost idle. They are blaming this or that, saying this

requires State Government's nomination or such and such's recommendation, like that. I would like the Minister and the Ministry to be a little active in this regard and fill up these vacancies as quickly as possible.

Now, Sir, Government is also not taking a total view on how the legal procedures can be simplified in the High Courts. Still the court language is English. No regional languages are being introduced. Even the Centre is lukewarm towards the efforts of States which are trying to introduce regional languages in the High Courts. I request this Ministry to see that they help wholeheartedly the States when these attempts are made.

Sir, another aspect to which the Union Law Ministry is closing its eyes is that the legal education all over India is in a shambles. In today's "Hindustan Times" there is a news that under the very nose of the Central Government, the Law Department, the Law School of the Delhi University is facing the chance of being derecognised by the Bar Council of India because a chaotic state of affairs is prevailing there. There are some 5-year degree courses and some 3-year degree courses. The Union Law Ministry should take initiative so that all over India we can have one uniform pattern of law education.

The Government, as in the case of the education policy, is only taking care of the upper layers of the judicial system, that is, the Judges of the High Court and the Supreme Court. But what is happening to other Judges, the District Judges and the Munsifs who deal with the real problems of the poor people? Sometimes they get such a pitiable amount that they have to travel in the same bus with the criminals themselves. The Government cannot absolve themselves of their responsibility just by saying that their service conditions are determined by the States concerned. Why not take some initiative and give some money to the States so that they can raise their allowances also, their salaries also?

I also feel that the Government's motives in bringing such Bills are not free from suspicion. On the one hand the Government tries to please the Judges, and on the other hand they approach them with many hidden and visible sticks. One such stick is the transfer of the Judges. At least one Chief Justice of the High Court has been forced to retire six months before his retirement because he did not like to be transferred. If the press reports are correct, he has even written to our President, Shri Venkataraman. (*Time bell rings*) Just one or two minutes, Sir.

I would like the Government to review the whole principle of transfer of the Judges and the Chief Justices of the High Court. If you continue to pursue this policy, what happens? Sometimes, the Chief Justices are transferred just before they have only 12 or 13 or 15 months to retire. How can a Chief Justice get acquainted with the local environment, the local people? It hampers administration of justice. They have the responsibility also to nominate the Judges to the Supreme Court. How can they nominate them unless they know them perfectly well?

Lastly, another thing I should request the Government is this. At one time they wanted committed Judges. We also want committed Judges. But the commitment must be to the Constitution, to honesty and integrity, not commitment to the philosophy of a particular political party.

By introducing and passing the Fifty-Ninth Amendment of the Constitution they are making deep inroads

[Dr. R. K. Poddar]

and encroachment on the democratic rights and liberties of the people. Yesterday there was a seminar in Delhi, in the JNU, in which the former Chief Justice of India, Shri P.N. Bhagwati has lamented that this question of human rights in India and elsewhere in the third world countries, is becoming more and more a rhetorical question only. If this thing continues, there will be no future for democracy even in India. So, I would request that the Ministry consider these matters and come up with a comprehensive legal education and legal policy for this country. Thank you.

SHRI PAWAN KUMAR BANSAL (Punjab): I rise to support the High Court and Supreme Court Judges (Canditions of Service Amendment) Bill, 1988.

Our hon. friend initiating the debate from the other side, as usual, was sceptical of the Government's initiative to bring about various salutary changes, this time in the conditions of service of the Judges of the various High Courts and the Supreme Court. I was at a loss to hear him say that on the one hand the Government tries to please the judges and on the other the Government harms the interests of the Judges. Nothing could be more stunning than this...

AN HON. MEMBERS: It is a paradox.

SHRI PAWAN KUMAR BANSAL: ....to accuse the Government, as our hon. friend from the other side has done.

The Government is committed to strengthen the democratic institutions in the country. The past track record of the Government bears testimony to that. The Government has always felt that the Judiciary, the Parliament and the Executive have all very important roles to play in our polity. It has always been the sincere endeavour of the Government to strengthen those basic tenets which go to strengthen any democratic policy. The Government is interested and would obviously be interested to see that the Judiciary in the country is strengthened. If at all, the Government wants the Judiciary to be committed, we have always made it very clear that the Government wants the Judiciary to be committed to the Constitution. It is very gratifying to observe that the Judiciary has always come up to the expectations and the aspirations of the people.

We are proud to have one of the very outstanding and best in dependent judiciaries in the world. I must congratulate the hon. Minister for bringing about the present Bill in further improving the service conditions of the Judges.

In the past the salaries and other perks of the Judges had become quite stagnant. The salaries, which had been fixed decades back, were prevalent till a few years back. It goes to the credit of the Government under Shri Rajiv Gandhi that action was taken to ensure that the Judges of the various High Courts and the Supreme Court are provided conditions which are quite commensurate with their position and the role which they have to perform. I am very confident that the interest, which the Government has taken in this regard, would ensure that the best men in the profession are attracted to the Judidiary. After having occupied those exalted positions they would contribute their mite to bring about the transformation of our society, which was visualised by our founding fathers.

The hon. Member initiating the debate referred to the resignation of a Chief Justice of one of the High Courts to make a point that there was

something wrong with the policy of transfer of Chief Justices of the various High Courts. I would remind my hon. friend that it was not against the policy as such that the particular Chief Justice resigned. After he was elevated to the post of Chief Justice from one particular High Court, he very willingly and gladly accepted the higher position in a different High Court. It is a different matter that because of one's own particular temperament or disposition or for any other personal reason that particular honourable Judge peferred to resign. But by one such stray incident, we must not castigate a system, castigate a policy which was formulated after due deliberations, after arriving at a consensus amongst all concerned that it would be in the interest of administration of justice if we have Chief Justices of various High Courts from places other than that of their origin. It is with same experience, with some feed back on that score that I venture to say here that the policy has paid dividends. Besides promoting national integration, it has to a great extent curbed very successfully a tendency which could sometimes, of various local considerations, bring about some dissensions in the various courts. Where the Chief Justice comes from different High Courts, it casts a great responsibility not only on the particular Chief Justice but also on other honourable Judges who work under him to prove to the countrymen that the judiciary of the land is one institution which, performing the Constitutional obligations entrusted to it, is a very vital instrument in bringing about a social change. (*Time bell rings*).

With these words, I welcome this Bill and the only thing which I would like to say before I conclude is that keeping up the tempo with which various administrative reforms have been brought about in the country and action has been initiated to usher in judicial reforms. I am confident that the Government would see that regarding the salaries of the Judges a system is evolved where we need not bring in amendments to the relevant Acts, again and again, but we do ensure that the salaries of the Judges of the High Courts and the Supreme Court as well as of the members of Superior and lower judicial services of the various States are such that they can perform their functions fearlessly and without favour or without having to bother for their own lives. They have to be placed in such conditions that their only mission, their only aim remains to interpret the law to the best of their ability and dispense speedy and expeditious and just justice. Thank you, Sir.

SHRI PUTTAPAGA RADHAKRISHNA (Andhra Pradesh): Mr. Vice-Chairman, Sir, this Bill is a very simple one. There are only three items included in this Bill. We have no objection on the three items. The first one is to remove the ceiling on the payment of death-cum-retirement gratuity for the Judges. We have no objection on that. The second one is exclusion from the income-tax, the value of perquisites provided to the Judges. On that also we have no objection. The third point is to extend the benefit of enhanced rate of pension and additional pension to the judges who retired before 1-11-86. In this respect, I would like to make a few observations. First of all, I want to associate myself with the sentiments expressed by my esteemed colleague, Shri Poddar of CPI(M). He has very well explained the financial implications of the Bill. Sir, through this Bill, the Government of India is going to gain favour. We are happy that the Government is gaining the favour. But

[Shri Puttapaga Radhakrishna]

at the same time, more cost is borne by the States. The share of the burden borne by the States is more than that of the Government of India. Here, the Government of India is gaining the favour and the States are bearing the burden. That is why, I associate myself with the demand of my colleague that the Government of India has to come forward for bearing the additional financial burden of the States on this account. That is my observation. As everyone of us knows, India lives in villages. That mean justice must be ensured at the grassroot level, at the level of the lower courts, the subordinate courts. Here I would like to say that the Government's attention is always at the judges of the Supreme Court and the High Courts as if the subordinate courts are not judiciary at all. The Law Minister is a very learned gentleman. He may say, it is not my subject. It is the subject of the State administering the laws at the subordinate courts. I would demand that they can take up a comprehensive law to have a uniform code for salaries, pension and conditions of service of the subordinate courts' judges. The facilities like proper payment of salaries and other benefits must be ensured to the judges of the subrodinate courts like munsifs, sub-judges and judges. That is why, on an earlier occasion also, I have made this demand. Again, I reiterate my demand and request the Law Minister that the Government should evolve some uniform code on this issue.

Then I would like to make another observation. There is no proper and correct policy for the promotion of judges as Chief Justices. There is an agitation going on in the country in several parts that justice is not done in the matter of promotion. There is no justice in the promotion cases. My State is one of those States which is facing such agitation. This is known to everybody that there is an agitation going on in connection with the appointment of the Chief Justice of Andhra Pradesh High Court. I do not want to go into the merit of the case. But let there not be any scope for that. There should be a fair, frank and definite policy for appointment as Chief Justice and let there not be a political agitation in that respect. With these observations, I want to support the Bill.

SHRI SURESH PACHOURI (Madhya Pradesh): Mr. Vice Chairman, Sir, I rise to welcome the High Court and Supreme Court Judges (Conditions of Service) Amendment Bill, 1988. Sir, it is good that this Bill has been moved amending the conditions of service of judges of the Supreme Court and the High Courts. It is only in the past few years that it has been realised that with the change of time and with the change of conditions, the conditions of service of these institutions, which are high institutions under the Constitution itself deserve to be considered. Sir, most of the speakers before me covered most of the positive points but I will speak on a very few points about the conditions of the High Court and the Supreme Court judges. Sir, there are three constitutional functionaries. Number 1, Executive, number 2, Legislature and number 3, Judiciary. It is unfortunate that judiciray is neglected and it is not getting the same treatment as others are getting. It is necessary to give proper attention and response to the judiciary. Sir, It is unfortunate that even today the administration does not treat these Constitutional functionaries in the proper manner. For example, in the Indian Airlines' VIP list the Judges of the Supreme Court do not find a place, not to speak of the High Court Judges. The residence

of a Judge, which is also an official residence, for all practical purposes, should be maintained by the CPWD in the manner in which they maintain the houses of other Constitutional functionaries. But a mere visit to these places will show how Constitutional functionaries like our Judges are treated by our own administration. Expressing happiness about this Bill, I want to emphasize on the floor of this august House that all those who are concerned with the administration must realise that Constitutional functionaries must be given their proper place which has been given to them under our Constitution, as, in our own country, Sir, Judges are regarded as Panch Parmeshwar. Secondly, before 1962, the age of retirement of the High Court and the Supreme Court Judges were 60 and 65 years respectively. As per the 15th Constitution Amendment of 1963, the upper age for the High Court Judge was increased from 60 to 62 years. But, I am afraid, the upper age for the Supreme Court Judge has not been increased. There was an idea at that time that there should be a gap of at least five years in the age of retirement of the High Court Judges and the Supreme Court Judges. As the upper age of the High Court Judge has been increased I urge that we should also consider raising the age of retirement of the Supreme Court Judge from 65 to 67 years.

Sir, justice delayed is justice denied. I would like to emphasise at this moment the need for expeditious consideration and decision in respect of appointments to the various High Courts so that delay may be avoided in the administration of justice.

While discussing this Bill, I feel that there should be improvement in the legal education standard. There should also be cooperation between the Bench and the Bar. I will draw your kind attention to the vacancy of the posts of Judges. Twenty to thirty per cent of the posts of Judges in the various High Courts are lying vacant for a long time and they are not being filled due to prolonged consultations and one cannot rule out the game of vested interests. Despite all efforts in my own State, that is Madhya Pradesh, four posts out of 29 posts of Judges and Additional Judges...

THE VICE-CHAIRMAN (DR. BAPU KALDATE): Even the Minister's State.

SHRI SURESH PACHOURI:...in the High Court are lying vacant. All efforts to fill up these vacancies have failed.

I agree that this Bill is having very positive points and our dynamic Minister, Mr. Bhardwaj, has brought this Bill at the proper time. With these few words, I welcome this Bill, Sir.

SHRI P. BABUL REDDY (Andhra Pradesh): Sir, this Bill to improve the service conditions of the Judges cannot provoke any opposition from any quarter. But it is a pity that the Government has to to come with this measure as a consequence of a direction by the Supreme Court. I do not know how it passed the scrutiny of an efficient person like Bhardwajji... that an artificial date like 1-11-1986 cannot be fixed for granting the benefits of revised pension. It is obvious that a person who retired on 31-10-1986 cannot be paid Rs. 2500 and a person who retired on 1-11-1986 cannot be paid a pension of Rs. 4500. On the face of it discrimination is writ large. So rightly the Supreme Court directed and very rightly the Law Minister came forward with this measure. The other things are they are given a sumptuary allowance. It

[Shri P. Babul Reddy]

is not so sumptuous. It is only Rs. 250 or Rs. 300 for giving a cup of coffee or tea or a plate of *upma* or *idli* to those who come to their house. Then rent-free accommodation. They have also increased the conveyance allowance. But unfortunately under the Income-tax Act these are treated as perquisites and are treated as part of remuneration. The result is the State Government gives with one hand and the Central Government takes away with another hand. So they realised that it is not the same Government's hands, it is a different Government's hands. So they are removing this anomaly now. But here we have to pause for a minute. Such a thing has to be done for others also. When you are giving some allowance, the allowance should not be included in the remuneration and tax should not operate on it as being part of original salary. If you are giving some allowance to meet a specific purpose like transport and if I am using that money for such purpose, then it should not be made a burden on my original remuneration by way of increased income-tax. You are eating into the original remuneration. So this facility should be extended to other fixed salary people also so that they will heave a sigh of relief. Then about gratuity the Rs. 50,000 ceiling also is not good.

So far as the provisions of the Bill are concerned I have a few comments to make taking this opportunity. Today arrears in courts have become a nightmare, not merely a bugbare. 1,75,000 cases are pending in the Supreme Court alone as on 31-12-1987. 14,39,000 cases are pending in the various High Court. And if you complete the present sanctioned strength of Judges in the Supreme Court and the High Courts and if they refuse to entertain any future petitions, they will take fifteen years to dispose of all these original pending cases. That is, you stop the in-gate and open the out-gate; do not receive any further petitions for fifteen years to come. The judiciary can say that, for fifteen years no new petition will be accepted or entertained. Even if they do that, it will take fifteen years for them to clear all the cases pending now. In Allahabad High Court alone there are 5 lakh cases pending. To meet this situation one of the things thought of was to increase the number of judges. To increase the number of judges we have passed a legislation with much fanfare giving top priority, even pushing behind other items of legislation on the Agenda of the House. The Business Advisory Committee was asked to give priority to this legislation which proposed increasing the number of judges of the Supreme Court from 18 to 26. But what is the result? Till recently the number of judges in the Supreme Court, after increasing its strength to 26, was not even the original component. It was just 15. Having said that strength of 18 would not be sufficient, you sought priority for this legislation and increased the strength from 18 to 26. But for 1½ years after that even the original quota was not there. Here a word about the appointment of Judges, etc. The honourable Minister, Bhardwajji, said in Rajya Sabha—I was told he said the same thing in Lok Sabha also—about three months back that very soon four judges for the Supreme Court would be appointed. I was present here when he said it and so he won't contradict it. He knows it and he can remember it...

SHRI HANS RAJ BHARDWAJ: I remember, precisely I did not mention the number. I said they would be appointed in a few weeks.

SHRI P. BABUL REDDY: No, no. You said four judges would be appointed soon. This was what I heard then. At least when I say that, because he has some respect for me, I think he will not contradict me and

he will verify that. This is a very small thing and I think my friend, Bhardwaj, would not make it a issue. What I am saying is that out the four Judges promised, only three Judges were appointed. Sir, there is a convention and I will tell you what it is. In Andhra Pradesh, there is the High Court. Andhra Pradesh is a fairly big State with 42 Members in the Lok Sabha and 18 Members in the Rajya Sabha, altogether 60 Members of Parliament, and it is one of the big States. When there was one Judge from the Andhra Pradesh High Court sitting in the Supreme Court, they used to say: "Let him retire and then we will appoint another Judge.". There is only one exception in the case of one person—I do not want to give the name here—in these last forty or fifty years when a second man was appointed for one year when Mr. Justice Subba Rao was there. Now, take the case of Karnataka which is half of Andhra. That is ruled by the Janata Party, Mr. Bhardwaj, and so, you cannot take exception to what I say though you may claim credit saying that though it is a State ruled by the Janata Party still you are so generous. Now, there were two Judges in the Supreme Court already and a third Judge has been mentioned who is fifth in rank in the Karnataka High Court, not the Chief Justice or the second or third person there, but the fifth.

SHRI VEERSHETTY MOGLAPPA KUSHNOOR (Karnataka): It is on merit!

SHRI P. BABUL REDDY: You better know, being a person coming from Karnataka, what merit he has. I do not want to comment on any Judge in particular. But certainly here it is not on merit. So, Sir, this is how the appointment of Judges is made. Vacancies are not filled in time as if it is so very difficult for a man like the honourable Minister, the efficient Minister, Mr. Bhardwaj. Can't he pick up some people for appointment as Judges in the Supreme Court and the High Court. What heavenly difficulty is there? Two people argue and a man decides and it is a simple thing provided he is honest. What we have to see is honesty. Then, on top of it, you look to the political leanings of persons and there are so many other things. A word I have to say about the Commissions of Inquiry. Sitting Judges should not be appointed in the Commissions of Inquiry where issues have political overtones. There is the question of the independence of the judiciary. The reputation and the majesty of the judiciary have been damaged so much by the recent appointment of sitting Judges to resolve issues having political overtones. It may not be political, issue but if the basis is political, don't appoint a sitting Judge. After all, Judges are also human beings and Judges are not without human weaknesses. So, naturally, with enormous powers in its hands, the Government certainly tries to interfere directly or indirectly, surreptitiously or otherwise, in their working. Recently, the Report of an Inquiry Commission was presented. There are so many Opposition parties and yet nobody is prepared to touch that Report even with the left hand. They are also conscious, when they are asked to decide about certain issues like the Bofors issue, or the issue of Mr. V. P. Singh's actions. etc. I have gone through that Report. They have devoted about forty pages to telling that Commissions of Inquiry should be protected from onslaught and that the Contempt of Courts Act should be made applicable. But that was not an issue referred to that Commission. You they were obliged to deal and they were more conscious of that. There was an editorial also in "The Indian Express. Therefore, sitting Judges should not be applited

[Shri P. Babal Reddy]

...(*Time bell rings*)... Kindly give me two more minutes.

THE VICE-CHAIRMAN (DR. BAPU KALDATE): May be it is the last speech.

SHRI P. BABUL REDDY: Sir, a maiden speech is treated with consideration. Similarly, the last speech also must be given consideration. It is an anti-maiden speech!

SHRI M. S. GURUPADASWAMY (Karnataka): What about retired Judges? You agree to their appointment?

SHRI P. BABUL REDDY: Now, Sir, with regard to the retired Judges, my view is that if a man occupies the highest position in the judiciary, he should not be appointed to any post afterwards when he retires. Because if once you dangle that hope in his mind, his independence is eroded. There are certain countries in which a man appointed as a District Magistrate must retire as District Magistrate; he will not be given a promotion.

On transfer of Judges, Sir, I was one of those who was opposed to the transfer of Judges in the beginning. Now time has gone by. The decision has been taken. I find my friend Mr. Somnath Chatterjee in the Lok Sabha also said: I am now supporting transfer of Judges having regard to the present circumstances. My idea is that no person belonging to that State should be a Judge in that court. This 'one-third' is creating a lot of mischief. There is a lot of race to avoid being included in that 'one-third'. So an independent man is inside the 'one-third' race—the person who is worldly wise is outside the 1/3rd. They say that among Judges there are two categories: some of them know law, others know the Law Minister. (*Interruptions*) They would successfully avoid 'one-third' and be present in the 2/3rds.

SHRI PAWAN KUMAR BANSAL: Sir, that is unfair. Every Judge knows the law and only the men of laws are made Judges (*Interruptions*)

SHRI P. BABUL REDDY: Mr. Bansal, I am not going by presumption. I am going by what is available in the field. Now, this can be avoided. All the Judges should be transferred. Now, the Supreme Court has made it very difficult for the Executive to transfer. The Supreme Court has given a ruling now. They have gone very carefully into the matter of Judges whether it is remuneration or anything else. So they protect their interests at least. So what happened was that they made it impossible for the Executive to transfer on any ground. Supposing there is some allegation of nepotism or some relation of his is practising in the court or he is favouring some juniors of his, all these are considerations which can be moved in a Resolution for impeachment. Any matter which can be a subject-matter in an impeachment cannot operate in their minds. So the result is that no bad man can be transferred; only a good man can be transferred, because if something wrong with the man means that that can be the subject-matter for impeachment. So that cannot be a ground for transfer. We can thus transfer only a good man against whom there is nothing wrong. In this state of affairs it is much better to transfer all the Judges.

Sir, a strike by Advocates is going on in Andhra Pradesh also. My friend has said that for two weeks the strike has been going on. There the complaint is that the Chief Justice transferred from here became permanent Judge later than the man who was working as the Acting

Chief Justice there. Once from Kerala a gentleman was transferred. The Judge there was dednied his chance. Second time the gentleman who became permanent Judge later became the Chif Justice here. Once again he lost his chance. So, on principle, the lawyers are fighting, though I know personally that they are not fighting for the individual. But still on principle they are fighting. In Delhi the courts for nearly two months have not been working. In Tis Hazari the work in the courts is disrupted time and again. So the Law Minister should take up immediately whenever such grievances come up. It should not be necessary to set on fire one dozen buses or to break trains to make them see where justice is. At least in the Ministry of Justice no resort to violent action should be necessary to make them see that justice should be done.

Sir, with these words I conclude.

SHRI VEERSHETTY MOGLAPPA KUSHNOOR: Mr. Vice-Chairman, Sir, I support this Bill. As Mr. Babul Reddy has pointed out, this Bill has been introduced on the direction of the Supreme Court. The earlier Bill was passed on 8-8-1986 by the Lok Sabha and on 14-8-1986 by the Rajya Sabha. I am unable to understand as to why at that time the drafters of this Bill could not find this anomaly and why should the Supreme Court have to direct us that this provision should be applicable even to the Judges who retired on 1-11-1986. We have received representations even from the Judges in regard to this. There is something wrong with the drafting of this Bill. They should have been very careful while drafting this Bill. We should not get directions from the Supreme Court unnecessarily. The credit for this goes to the Supreme Court and not to the legal department. Mr. Bhardwaj is a very able Minister. He should take care to see that such things do not happen in future.

Sir, Mr. Babul Reddy has already said what I wanted to say. The delay in the disposal of cases has given a lot of anxiety to the litigant public. It is not only my view. Here I wanted to quote Justice Bhagwati. He has expressed fear that the judicial system is about to collapse under the weight of mounting arrears and governmental apathy and neglect. He has called for structural changes to save the judiciary. The Chief Justice of the Supreme Court has pointed out that the present system confers all the advantages on the dishonest and the rich. These are the strong words which have been uttered by Justice Bhagwati. It has been pointed out just now that more than one lakh cases are pending in the Supreme Court and 14 lakh cases are pending in the High Courts. What are you doing to dispose of these cases? Is any structural change necessary? We will have to frame rules and regulations whereby the cases are disposed of early. I will like to quote one instance. Article 226 is being used in the High Courts. Article 32 gives powers to the Supreme Court. In certain cases, the people go to the Supreme Court without going to the High Courts and file a writ under Article 32. Nowadays, the lawyers' strike is there all over the country. About this, the Bar Council of India had to pass a resolution whereby first you approach the High Court and then you go to the Supreme Court under Article 32. The Bar Council says that the people are going to the Supreme Court for every thing. Now going to the Supreme Court is not an easy job. It is very costly. The lawyers demand more than Rs. 4000/- or Rs. 5000/- per day. How much they are showing in the accounts and how much they are getting is another matter.

THE VICE-CHAIRMAN (DR. BAPU KALDATE): Ask Mr. Bansal. He may be knowing something.

SHRI VEERSHETTY MOGLAPPA KUSHNOOR: In the High Courts also ,it is a costly business. A poor man cannot go either to the Supreme Court or to the High Court. If you examine the cases which are pending before the Supreme Court or the High Court, you will find that 70 per cent of the cases are the cases of big people who can afford to pay. Those people can get justice. But a poor man cannot get justice. My submission is that if there is any chance of decreasing the number of pending cases in the Supreme Court or the High Courts by introducing structural changes or by increasing the strength of the Judges, then this should be done. In some cases, the arguments are being heard by the Supreme Court Judges for one day or two days or three days. The same thing is repeated. In certain cases, if the Judges read the entire file, they will come to know which side the case will go. There must be some restriction on the arguments of certain cases. If we allow the arguments to continue for days together, then justice will not be there.

4-00 P.M.

Sir, about adjournments also, innumerable adjournments are being given. And it is taking place even in the mofussil courts and the district courts. The lawyers are taking adjournements, even the Judges are also taking the adjournments. They do not say so. They say, 'certain lawyers requested and, therefore, we are adjourning.' They never take that responsibility that 'I am adjourning the case'. Such things are happening. We must see that there is an end to such things. We must see what the common man feels. The common man, the litigant cannot say anything against the lawyers nor can he say against the Judges. He has to keep quiet for years together. He has no guts to raise his finger against the lawyers or the Judges. So, we the Parliamentarians, we the Members of Parliament, will have to think about how to dispense justice as quickly as possible. Even after 15 years, the cases are not being disposed of. I am also a lawyer; I have practised for 21 years. I have known of a case which was started by a person and ended with the grand-son. His grand-son has to fight that case. Such things are happening. We have to be very careful. We should see that justice is done as early as possible.

With these words, Sir, I conclude.

SHRI BIR BHADRA PRATAP SINGH (Uttar Pradesh): Sir, I call this piece of legislation as enabling legislation, enabling the Judges to enjoy the fruits of emoluments and additional facilities, enabling those who were not getting the benefit of pension to get the benefit of pension and so on and so forth. Everybody has welcomed it and I associate myself with them.

Now, Sir, there are three questions which have been raised and I want to say that they go to the very roots of judicial system. Sir, just now, one of my learned friends has said that there should be a restriction of time imposed on the disposal of arguments and conducting the cases. Sombody suggested that there should be a code for each Judge for disposal of cases. And incidentally my High Court is always referred to as the High Court having the maximum number of arrears. But nobody considers that the Allahabad High Court is the biggest judicial centre and Uttar Pradesh is the biggest State with the biggest population. They remember only the other thing and these are forgotten. But there is one thing which I wish to appeal to my learned Law Minister that in the name of doing away

with the arrears, please do not put limitations on the exercise of jurisdiction by making amendments to the statute by providing judicial review or judicial decisions. Often it is said, "restrict the scope of second appeal, restrict the scope of Section 115 of the CPC". Kindly do not do it because that is an outlet to the grievances between the litigant parties. And it gives them some satisfaction. So, such methods should not be resorted to to reduce the arrears. Sir, I was shocked to hear Mr. Babul Reddy when he was referring to the Supreme Court. At least, one institution should be spared from regional feelings and parochial feelings. There are two Judges from Andhra, then there should be seven Judges from Uttar Pradesh, then there should be..

SHRI P. BABUL REDDY: I never said that. He did not understand me. If one Judge in the High Court is from Andhra Pradesh, the second Judge cannot be appointed on that ground for 5 years.

SHRI BIR BHADRA PRATAP SINGH: Let there be no Judge from Uttar Pradesh. I am prepared to concede that. So far as the Supreme Court is concerned, the appointment must be on merit.

SHRI P. BABUL REDDY: So long as the Prime Ministership is given to Uttar Pradesh.

SHRI BIR BHADRA PRATAP SINGH: No regional representation. There is so much of voice raised in this matter about regional representation, parochial representation and that the Scheduled Castes should come, the weaker sections should come, the minorities should come and so on and so forth. Let it be a qualitative Supreme Court with an all-India fame, with high imagination, the lines on which we wanted to conceive the highest judiciary. About one thing I am very serious and about which I wanted to impress upon the Law Minister. That is about the transfer of Judges. And I want to give him my practical experience I am having for 30 years in the High Court. Now, in the same High Court, illustrious High Court, relations of judges have started pouring in such large numbers as advocates and the result is that if an ordinary advocate would charge Rs. 500 for bail, the judge's relation would get Rs. 50,000. Then there is another big difference. Our senior advocates used to accommodate a lot of junior lawyers in their chambers. Now, one disease has cropped up. If judges' relations are appearing, why not have their sons and relations as their juniors. The result is that they are taking sons and relations of judges as their juniors. So, the independent institution of training people, inducting them in the legal profession and encouraging them as advocates is getting discouraged day by day with the result that High Courts will become a vicious circle of patronage and the kind of supporting ground for the sons and relations of judges. Therefore, I am one advocate who is feeling very strongly that the percentage if it is required to be increased by way of a constitutional amendment, please you must resort to total transfer of judges from one High Court to another not only from the national integration point of view, but barring a few to deal with the local laws and local customs, you can leave a few in every High Court, otherwise it will not be a free High Court, it will be a biassed High Court, it will only serve their own relatives and advocates and High Court Judges obliging each other. (*Time Bell rings*). Sir, I had to make another two or three important points.

THE VICE-CHAIRMAN (DR. BAPU KALDATE): You can take

[Dr. Bapu Kaldate]

some other opportunity to make those points. You may conclude now.

SHRI BIR BHADRA PRATAP SINGH: All right, Sir. With these words then, I support the Bill. Thank you.

श्री कैलाश पति मिश्र (बिहार) : उपसभाध्यक्ष महोदय, न्याय का आधार है न्यायमूर्ति । अभी एक माननीय सदस्य ने भाषण देते हुए कहा था कि न्यायमूर्ति पंचपरमेश्वर होते हैं। मुझे लगता है पंच जोड़ने की जरूरत नहीं केवल परमेश्वर से काम चल सकता है । लेकिन परमेश्वर में जिसको विश्वास है वह इस बात को जानता है कि परमेश्वर निष्पक्ष होता है, निर्भीक होता है, किसी भी प्रकार के भय से वह ग्रसित नही होता । जब कभी कोई इनके बारे में कोई बात उछाल देता है तो मुझे अच्छा नहीं लगता । मैं यह कहता हूं कि न्यायमूर्ति को सत्ताधारी और विरोधी दलों के प्रभाव में डालने की आवश्यकता नहीं है । हमारी सरकार ने यह कहा, उस सरकार ने यह कहा, यह नहीं होना चाहिए । यह एक शाश्वत प्रतिक्रिया है । सरकार चाहे इधर की हो या उधर की हो न्यायमूर्ति ईश्वर का स्थान ले सके, परमेश्वर का स्थान ले सके, ऐसी व्यवस्था रहनी चाहिए । न्यायमूर्ति इन्सान है ईश्वर नहीं है लेकिन ईश्वर की ओर खींच कर ले जाना चाहते हैं । पर चाहिए क्या ? शारीरिक सुरक्षा चाहिए, पारिवारिक सुरक्षा चाहिए, आर्थिक सुरक्षा चाहिए, निर्भीकता चाहिए, निष्पक्षता चाहिए । इतने व्यापक प्रश्नों को छोड़कर जो विधेयक आया है यह विधेयक बहुत छोटा है । इस विधेयक का समर्थन न करने का कोई कारण नहीं है लेकिन इस आधार पर विचार करने के बाद कई चीजें ऐसी इसमें जुड़ जाती है और मेरी समझ में नही आता कि कोई एक भी ऐसा केस जो सीधे हाई कोर्ट में आता हो, या सुप्रीम कोर्ट में आता हो वह जिला कोर्ट में न जाता हो, सब-डिवीजन बैंच में न जाता हो, सी०जी० एम० में न जाता हो, एकदम उछल कर हाई कोर्ट और सुप्रीम कोर्ट में जाता हो कम से कम एक भी केस मेरी जानकारी में नहीं है । मैं कोई विधिवेत्ता नहीं हूं ।

श्री बीर भद्र प्रताप सिंह : तीन कोर्ट में ऐसा है–बम्बई, मद्रास....

श्री कैलाश पति मिश्र : यह बता रहे हैं कि तीन कोर्टस में ऐसा है तो वहां पर होगा । लेकिन जहां से जड़ आरम्भ होती है, मुसिफ कोर्टस, सब-डिविजनल कोर्टस और डिस्ट्रिक्ट कोर्टस, आप इनकी व्यवस्था को कैसे नियमित करेंगे ? केवल यह कह कर केन्द्रीय सरकार इस मामले को नहीं छोड़ सकती है कि यह राज्य सरकारों का मामला है, राज्य सरकारों के अधीन है । वहां पर जो अराजकता व्याप्त है, अनेक कारणों से जो अराजकता है, उस अराजकता से निकलते निकलते कैसेज हाई कोर्ट और सुप्रीम कोर्ट में पहुंचते हैं । मैं समझता हूं कि सुप्रीम कोर्ट के स्तर पर भी इसका असर पड़ सकता है, यद्यपि सुप्रीम कोर्ट में न्याय तो मिलता है, लेकिन अगर थोड़ा-सा मुकदमा गलत हो गया तो सुप्रीम कोर्ट में भी न्याय देने में कठिनाई होती है । इस संदर्भ मे मैं एक बात का उल्लेख करना चाहता हूं । श्री बाबूल रेड्डी जी ने कुछ आंकड़े दिये हैं । उन्होंने बताया है कि सुप्रीम कोर्ट से लेकर, हाई कोर्ट से लेकर डिस्ट्रिक्ट कोर्ट तक कितने मुकदमे लम्बित है । उन्होंने यह भी बताया कि अगर एक भी नया मुकदमा न लिया जाय तो इन मुकदमों का निपटान करते-करते 15 वर्ष लग जाएंगे । आज हमारे देश में स्थिति यह है कि हर तरफ मुकदमों की संख्या बढ़ रही है और घटनाएं भी बढ़ती जा रही हैं । हर दिन मुकदमों की संख्या बढ़ रही है । ऐसी स्थिति में भी अगर नये मुकदमें न लिये जायें तो इन मामलों को निपटाने में 15 वर्ष लगेंगे । इसलिए हमारे देश की 70 करोड़ जनता कैसे विश्वास कर सकती है कि उसको न्याय प्राप्त होगा, यह बात समझ में नहीं आ

रही है । इसके लिए सरकार कौन-से कदम उठाने जा रही है, यह स्पष्ट किया जाना चाहिए । इसी सत्र में एक सवाल शुगर इंडस्ट्री में काम करने वाले वर्कर्स के बेंजज के संबंध में था यह बताया गया कि इनके लिए एक वेज बोर्ड गठित किया गया है । सन् 1985 से अब 1988 आ गया, यह पूछा गया कि उसकी अनुसंशा क्या है ? जिस समय राज्य मंत्री महोदय जवाब दे रहे थे उस समय साफ दिखाई दे रहा था कि वे सब पूरक प्रश्नों के उत्तर देने की स्थिति मे नही हैं । अन्त में यह कहा गया कि अवकाश प्राप्त न्यायाधीशों को इन कामों के लिए नियुक्त किया जाता है । तीन वर्ष के अन्दर वज बोर्ड की जो रिकमेंडेशन मिलनी चाहिए थीं, जो अनुसंशा मिलनी चाहिए थी, वह नहीं दी गई है । निष्पक्षता और निर्भयता के अन्तर्गत यह भी बिन्दु आता है कि किसी भी न्यायाधिपति को अवकाश प्राप्त करने के बाद इस बात की चिन्ता न रहे कि आगे का उसका जीवन कैसे चलेगा । किसी लोभ, लालच या प्रलोभन के ऊपर उसके हृदय में झिझिक रहे तो यह न्याय व्यवस्था के लिए उचित नहीं है । इसलिए मेरा विचार है और होसकता है कि इसके बारे में मतभेद हो सकते हैं, ऐसे कमीशनों और ऐसे वेज बोर्डस में अगर अवकाश प्राप्त जजों को नियुक्त करने की परम्परा चलती रहेगी तो इसमें भी निष्पक्षता पर चोट पड़ सकती है, वह निर्भीक नहीं हो सकती है। इसलिए जो यह विषय उठाया गया है कि खाली स्थानों की पूर्ति शीघ्र से शीघ्र की जाय, साथ ही यह कदम भी उठाये जायें कि जो न्यायिक स्थल हैं, कोर्टस हैं, उनके संबंध में केन्द्रीय सरकार से मेरा आग्रह होगा कि ये विषय केवल राज्य सरकारों पर छोड़ देने से काम नहीं चलेगा । आपको इनके संबंध में डायरेक्टिव देने चाहिएं, आवश्कतानुसार फण्ड दीजिए और आप इस बात की भी छानबीन करें कि उन डायरेक्टिव के अनुसार कोर्ट में काम हो रहा है या नहीं ।

SHRI HANS RAJ BHARDWAJ: I must thank all the hon. Members who have been very kind, indeed, in support the measures contained in this Bill. I would first like to clarity what Kushnoorji said, when he apprehended that there was something in the drafting. There is no anomaly i n the drafting. As I pointed out in the initial comments which I made, so far as gratuity is concerned, there is a scheme by which Government pays gratuity to its employees. This is obviously for the service rendered, number of years of service rendered by an official. There is a principal that some part of his salary is put in gratuity ; it is fifteen days or so. This is the proportion and after his retirement, money is paid to him. There was a provision for gratuity. But the Supreme Court felt that these should not be two classes of judges, one who retired after 1st November 1986 and the other who retired before 1st November, 1986. The Supreme Court gave a verdict which we are giving effect to. I wanted to clarify the point raised by my hon. friend. This has been done on the directive of the Supreme Court and after it was discussed here and with the Supreme Court Chief Justice. After all the number of judges who have retired and who are still surviving is not large. It will be about one or two hundred. We wanted that the verdict of the Supreme Court should be respected and with a view to respecting the judgement of the Supreme Court, we have brought forward this measure. The Supreme Court itself has said that it will not be a precedent for any other class of persons. This is in regard to gratuity.

[Shri Hans Raj Bhardwaj]

About perks . . .

SHRI P. BABUL REDDY: This is only in respect of judges. It will not be a precedent for others.

SHRI HANS RAJ BHARDWAJ: They have clarified it. It was an agreed order which the Court has passed. I have got a copy of the order with me here. I am not taking credit for it.

SHRI P. BABUL REDDY: I am not finding fault with you. Justice only for judges. It will not be a precedent for others.

SHRI HANS RAJ BHARDWAJ: They have said so. The principle of gratuity is such that you cannot implement it by orders of the Supreme Court or the High Court. You have a scheme for the Government employees. This is what the Supreme Court has said. Since there was an order, we had to bring forward this amendment.

In regard to the Income-tax relief on the conveyance facility, earlier, the Supreme Court judges were getting Rs. 500. In view of the hike in the petrol price and all that, it was thought that transport facilities should be available to them fully. The facility included a car, a chauffeur and 150 litres of petrol. If they are to pay Income-tax on this, it will be quite burdensome. Therefore, I am glad that all the Members have supported this amendment.

Then, Sir, there is some apprehension in the minds of the hon. Members regarding transfer of judges. There are two matters. One is in regard to the transfer of Chief Justices from one High Court to another. This matter was gone into by the Supreme Court and as a policy, in public interest, the Supreme Court held that you can have Chief Justices from outside. The principle of seniority was laid down. They said that when a Chief Justice goes to another High Court, the next puisne judge should be junior to the incoming Chief Justice.

I would here like to clarify the position in regard to Andhra Pradesh Justice Yogeshwar Dayal is senior to Justice Raghuvira. You should bear this in mind. Justice Yogeshwar Dayal's appointment is of 1974 and Justice Raghuvira's appointment is of 1975. Therefore, there is no question of a junior Chief Justice being sent to your Court there. Perhaps, you are taking the permanent Chief Justice . . .

SHRI P. BABUL REDDY: Ranking is only on the basis of seniority of permanent judges.

SHRI HANS RAJ BHARDWAJ: I say this with full responsibility. Seniority is given from the date of appointment and not otherwise. After the judges' transfer case, the Supreme Court has said so. Even if an additional judge is appointed, it is presumed that you will have to confirm it and you cannot appoint another additional judge unless that additional judge is made permanent. You are well aware of this. I would assure hon. Members that no departure whatsoever has been made in any case throughout the country in my tenure so far.

SHRI PARVATHANENI UPENDRA (Andhra Pradesh): Have you appointed Justice Raghuvira?

SHRI HANS RAJ BHARDWAJ: He is also being appointed. He has

himself said that he would go after 31st. There is a Lok Adalat. I will never accept the allegation that there is any discrimination so far as Andhra Pradesh is concerned. Justice Raghuvira will also go to a High Court where his seniority will fit in and there are one or two High Courts where vacancies are there. His case is being processed and very soon he will be installed as Chief Justice of one of the High Courts. These lawyers are on strike. They are not in a mood to work, whatever the reasons. It is hardly permitted for the lawyers to go on strike on the question of appointment of a Chief Justice. I fail to understand why the lawyers should go to such an extreme. I feel the lawyers should go to strike only in two extremes, where there is erosion of judicial review. That is one of the responsibilities of the lawyers to see that the judicial review and power of judicial independence is always upheld and it is the responsibility of the bench and the bar alike. Lawyers cannot misbehave with public. They cannot take the law into their own hands. This is not permissible according to the traditions and the profession.

SHRI PARVATHANENI UPENDRA: What is the second contingency, when they are beaten?

SHRI HANS RAJ BHARDWAJ: No, the doors of the court should never be closed to the public. What for are the lawyers meant? People hold them in very high esteem, they consider them the leaders of the society, but if the lawyers start closing the doors of the people to the court, what will happen? Who will defend their rights, who will argue their cases because vast majority of the people do not understand the very significance of going to the court? They have the assistance of the lawyers. So, any responsible lawyer will never be a party to the erosion of judicial review or the system of administration of justice. I do not know why they are on strike because the Chief Justice of India is keen, whenever the turn of a judge has arrived for his promotion or confirmation of a Chief Justice, he always recommends that so and so is suitable.

SHRI PARVATHANENI UPENDRA: What about the statement made by you?

SHRI HANS RAJ BHARDWAJ: My statements do not have any effect in Andhra, there your statement will win. I have told you many a time that there will be no discrimination anywhere in India, what to speak of Andhra. It is very easy for some people who have some sort of interest in the strike. I do not know who is interested in strike. Tis Hazari lawyers never came to see me. I am one of the lawyers who has practised in Tis Hazari for more than 20 years. Hundreds of lawyers there are my own juniors, but they were grabbed by politicians.

SHRI P. BABUL REDDY: Government is the beneficiary.

SHRI HANS RAJ BHARDWAJ: Not at all. We are not the beneficiary. You cannot take this so lightly. You are a lawyer who has put in 50 years of practice at the bar. You must be aggrieved over the conduct of the lawyers, at the conduct of your own brothers. One of them is sitting here. You have seen what happened in the High Court. They lifted the boxes. We were never such lawyers in the bar. We will never tolerate such lawyers in the bar. We will support only those lawyers who are for the rule of the law, for the dignity and indepedence of the profession. What are they doing? One of the things they did was, they threw out their own president and secretary because they were negotiating for them. The second thing they did was,

[Shri Hans Raj Bhardwaj]

they threw out their own High Court president who had to resign forcibly. He was one of the topmost lawyers of criminal side. The third thing they did was, they threw out the president of the Supreme Court.

SHRI MURLIDHAR CHANDRAKANT BHANDARE (Maharashtra): Nobody has thrown me out. All my members are with me and the Supreme Court is working.

SHRI PARVATHANENI UPENDRA: They only beat you .

SHRI HANS RAJ BHARDWAJ: I am happy that he has given a very good leadership to the bar today. I wish many more leaders like him were born in this country. I am only reminding that it is very easy to ignite the fire but it is very difficult to extinguish it. I am saying this with great pain. I cannot go to the court today because I am a Minister. Otherwise, there won't have been strike. I would have consoled them, I would have taken them into confidence. I never try to ignite fire. I maintained that as long as I was there in the bar. There was never such strike. (*Interruptions*). I am only submitting that I have practiced for 30 long years. There was never a precedent like this.

SHRI DIPEN GHOSH (West Bengal): Then, it is better for you to go back to the bar than to be the Minister.

SHRI HANS RAJ BHARDWAJ: I may go. I am not permanently here. I will be very happy the day I go back. (*Interruptions*). A professional will never be unhappy to go back to the bar. It is a privilege to be a member of the Bar. I am only pointing out that the people, who have resorted to strike are doing no justice to society because lawyers are the champions of liberties. They stand in between despotism and rule of law. If that is the role they accept they will always see reason. If there is any problem, you can always come and discuss with us it you consider we are brothers. If you consider we are not brothers, you can go to the bigger Minister, the Governor in Delhi; everybody is available. What is happening is I am only taking you into confidence that they are not enhancing their prestige. Prestige of the profession will only be enhanced when we make sacrifices for our litigants.

SHRI PARVATHANENI UPENDRA: Let us now come to the judges and leave the lawyers.

SHRI HANS RAJ BHARDWAJ: I hope you are now satisfied about your Andhra problem because I have elaborated it.

SHRI DIPEN GHOSH: Let us come to the jugdes now, but not to the judge who was born thrice.

SHRI HANS RAJ BHARDWAJ: I am coming to the judges now. One of my very close friends, Mr. Upendra, raised a question of Andhra and I must tell him that there will be absolutely no discrimination.

Another statement which I would like to make, because this is a very vital issue, is that if there is any grievance about the transfer of a judge, it must be made to the Chief Justice of India because if you know the judgment of the Supreme Court, a Judge or Chief Justice cannot be transferred unless you consult the Chief Justice of India. Whether it is a Chief Justice or a Judge, we always go to the Chief Justice of India and after he is consulted, is the Judge concerned transferred. Even in the transfer of Chief Justices, suitability is always decided by the Chief Justice and once the Chief Justice is satisfied on a matter like this where judi-

ciary is involved, I do not think any hon. Member should have a grievance because we must have confidence in the Head of the Judiciary.

Then with regard to the arrears in the courts, we have gone into that exercise. The disposal rate remains the same. As a matter of fact in some of the High Courts the rate of disposal has gone up. Except a few High Courts the rate of disposal almost remains 700 to 750 cases in a year. We have gone into an exercise whereby we can reduce the arrears in a span of three or four years by appointing additional Judges. So I would like to inform the House that we have decided to give 90 more High Court Judges in the various High Courts and very soon their appointments will be made.

With regard to subordinate judiciary, I must tell you that the subordinate judiciary is always under the administration of the High Courts and the State Governments. We had passed a resolution when we met in Delhi in September, 1985. At that time the State Governments were also invited, the Chief Ministers and the Chief Justices were invited and we have a well-considered programme for expansion of the subordinary judiciary, their courts and other facilities. The States are taing interest in that direction also—about transport, housing and other facilities. There arefinancial constraints. I have requested them to approach the Finance Commission for allocation of more funds. On this issue, we have also several other proposals from High Courts and State Governments regarding allocation of funds and these will be discussed at the appropriate time.

So far as the appointment of Judges is concerned, you will find that the vacancies, position fluctuates between 40 and 60. Now we have evolved a procedure of a specific time-bound programme for the States and the recommending Chief Justices. That is being brought into action. Some results have also come in and I hope the transfers will be made, even appointments will be made speedily.

With regard to the other questions raised about the simplification of procedure, the English language etc. this is not the time when we should discuss it because a full debate on this issue will be required. If you want to change English as the court language in the Supreme Court and various High Courts, it is a fairly controversial issue and we would like to have more clearer views of the hon. Members and members of the Bar and Judiciary.

So, at the outset as I have submitted, this is a very non-controversial measure, and the hon. Members have supported me.

I commend this Bill for being passed by the House.

SHRI DHARAM CHANDER PRASHANT (Jammu and Kashmir): Sir,...

THE VICE-CHAIRMAN (DR. BAPU KALDATE): I know. I looked for you. You were not here unfortunately. The Minister has already replied. At the third reading you just get up. I will give you a chance.

Now, the question is:

"That the Bill further to amend the High Court Judges (Conditions of Service) Act, 1954 and the Supreme Court Judges (Conditions of Service) Act, 1958, as passed by the Lok Sabha, be taken into consideration."

The motion was adopted.

THE VICE-CHAIRMAN (DR. BAPU KALDATE): We shall now take up caluse-by-clause consideration.

[Dr. Bapu Kaldate]

Clauses 2 to 7 were added to the Bill.

Clause 1, the Enacting Formula and the Title were added to the Bill.

SHRI HANS RAJ BHARDWAJ: Sir, I move:

"That the Bill be returned."

The question was proposed.

SHRI DHARAM CHANDER PRASHANT (Jammu and Kashmir): Sir, I rise in support of the Bill. The Bill is welcome. I want to give a few opinions about the Bill. According to the Setalvad Law Commission the transfer of the Chief Justice and other Justices from one High Court to another High Court should be in exceptional cases. I want to ask whether this has become a permanent practice or it is being done in exceptional cases. That is number one.

Number two, there is also an opinion that at least one-third of the High Court Judges should be from outside. The High Court Chief Justice has to play a very crucial role in judiciary. But in other fields also he is invited. In my own State I see that the High Court Judges are invited in social and religious functions, if not political. He plays a very important role in other States also. If the Chief Justice is from outside, he will not be conservant with the local conditions, social or religious. So, to know this, he will have to wait for two three, four years. But a Judge from the same State can easily exercise such functions. So, I want to know whether this has become a permanent exercise or it will be in rare cases, exceptional cases that transfer of Judges from one High Court to another High Court will be made.

SHRI HANS RAJ BHARDWAJ: Sir, I have submitted that so far as the Chief Justice is concerned, it is an accepted policy of the Government to have Chief Justice from outside. It has many benefits. Some benefits, I have highlighted. A Chief Justice who has gone from one court to another court has found more respectability. His independence has been appreciated. So, it has become the policy that the Chief Justice will be from outside.

With regard to transfer of other Judges, the one-third policy stands. But effort is always made to see that the Judges are appointed initially in other High Courts rather than disclocating their life by transferring them from one High Court to another. Therefore, at the time of initial appointment we are transferring Judges from one High Court to another.

THE VICE-CHAIRMAN (DR. BAPU KALDATE): The question is:

"That the Bill be returned."

The motion was adopted.

MESSAGE FROM THE LOK SABHA

I. The Committee on Public Accounts

II. The Committee on Public Undertakings

III. The Committee on the Welfare of Scheduled Castes and Scheduled Tribes

SECRETARY-GENERAL: Sir, I have to report to the House the following messages received from the Lok Sabha, signed by the Secretary-General of the Lok Sabha:—

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"I am directed to inform you that Lok Sabha, at its sitting held on Wednesday, the 30th March, 1988, adopted the following motions:—

"That this House do recommend to Rajya Sabha that Rajya Sabha do agree to nominate seven members from Rajya Sabha to associate with the Committee on Public Accounts of the House for the term beginning on the 1st May, 1988 and ending on the 30th April, 1989, and do commu-